



INTERNATIONAL LEGAL GUARANTEES FOR THE PROTECTION OF NATIONAL MINORITIES AND PROBLEMS IN THEIR IMPLEMENTATION

WITH SPECIAL FOCUS ON MINORITY EDUCATION

National Minorities and the Content of Education
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1. Background

The issues to be addressed in this session have been formulated as:

- enhancing majority's knowledge of minority culture and vice versa through school curricula
- access to/content of textbooks and teacher training
- equal opportunities for access to education at all levels

This list is clearly drawn from the provisions of article 12 of the Convention, which covers a number of somewhat disparate issues. The work of the Advisory Committee under the Framework Convention on this and other articles has been extensively reviewed by Duncan Wilson in *Filling the Frame* and by the Advisory Committee itself in its *Commentary on Education under the Convention* and it would not be particularly helpful to attempt a summary of their conclusions. Both of these documents, however, have emphasised that it is difficult and often ill-advised to attempt to deal with the underlying educational issues on an article by article basis. This brief presentation will follow that advice in highlighting one or two issues of concern in the implementation of the education provisions of the Framework Convention.

2. The objective of multi-cultural/inter-communal education

There has often been some lack of clarity over the precise meaning of the term multicultural education. Many people use the term to cover the general concept of education that is directed towards mutual understanding between different communities, which is the underlying purpose of articles 6 and 12(1) of the Framework Convention. The United Nations Working Group on Minorities, however, has added to the confusion by proposing that the term 'multi-cultural education' should be used to refer to separate education for different cultural communities and the term 'inter-cultural education' to refer to education designed to educate each community about others. As this distinction is referred to in the Advisory Committee's *Commentary* it may be worth stressing that the underlying purpose of the Framework Convention is education that is directed towards mutual understanding between different cultures, however it is described, and that the task of the Advisory Committee is to assist states to achieve that objective in the most appropriate manner.

3. The role of the official and the hidden school curriculum

It is clear that education for mutual understanding requires some allocation of time within the overall school curriculum. In most educational systems there is provision for the curriculum to include the study of national history, aspects of national culture and the essential rights and responsibilities of citizenship. The terms of article 12 and the check-list developed by the Advisory Committee indicate that this should include the study of the history and culture of national minorities. But there must be some caution over the effectiveness of this approach. Where children from different ethnic, religious, linguistic and cultural background are educated in separate schools, whether as a result of educational legislation and policy or of the pressures of residential and social segregation, there is a danger that formal provisions for a curriculum that includes the study of the history and culture of minorities will be submerged or overridden by what is often referred to as the hidden curriculum, an amalgam of preconceptions and prejudices shared by teachers and pupils from a single cultural background. This has certainly been the experience of the segregated education system in Northern Ireland where despite formal provisions for a balanced history and for time to be allocated to an official programme of education for mutual understanding (EMU) there is evidence that sectarian attitudes among children are increasing rather than diminishing. Similar concerns have been raised in Britain over the effects of de facto educational segregation within the Muslim community in many towns and cities and have led to official programmes for the development of a curriculum focused on Britishness and citizenship rather than multiculturalism. The lesson may be that integrated educational structures in which children from all major communities are educated together in integrated 'multicultural' classes have more impact on mutual understanding and tolerance than formal provisions for a 'multicultural' curriculum delivered in segregated schools or classes. The Opinions of the Advisory Committee in this respect have generally focused more on the benefits of bilingual educational structures in the implementation of article 14 than those relating to religious and cultural integration under articles 6 and 12.

4. Text books and training

It is reasonably clear that any educational policy requires effective provision for the production of appropriate text books and teacher training. The Advisory Committee has rightly drawn attention to the need for governments to ensure that both are provided in respect of whatever policy for minority education is adopted and that there is a particular problem in respect of the production of appropriate textbooks in minority languages and the training of bilingual teachers. It must be remembered, however, that this aspect of the management of minority education is in practice subordinate to policy decisions on what form of provision is made for the various categories of minorities which have become established in particular areas. The Advisory Committee has rightly drawn attention to the need for a flexible approach to this in the core considerations identified in the final section of its *Commentary*.

5. Different kinds of minorities

A significant and related issue to which rather less attention has been paid is the increase in the number and range of minority communities in many States. The European approach to minority protection, both under the Framework Convention and in respect of the formal mandate of the OSCE High Commissioner for National Minorities, has been to focus on what are called 'national minorities' without specifying what constitutes a national as opposed to any other type of minority. The European Charter for Regional or Minority Languages specifically excludes the languages of immigrant communities. But the trend in international as opposed to European human rights instruments is to include all national or ethnic, religious and linguistic minorities regardless of how long they have been established. Since the focus of the work of the Advisory Committee is in part determined by the identification of 'national' minorities in state reports, the identification and treatment of immigrant minorities has not been a prominent concern in its Opinions and *Commentary*. But in many European states the treatment of the growing number and size of immigrant minorities is a major political and practical concern. Many of these immigrant minorities are now well established in many areas and are

represented by second and third generations of children. Others are more recent arrivals. And mingled with them there are likely to be members of longer established 'national' minorities who have moved from their traditional areas of settlement in search of employment or other life opportunities. But in many capitals cities and major towns the numbers of these new immigrant minorities are larger than those of their 'national' counterparts. The question of how all these minorities are to be treated under – or even in competition with - the Framework Convention, not least in respect of educational provision, cannot be indefinitely postponed or ignored.

6. Education for immigrant minorities

The provision of education for immigrant minorities raises somewhat different issues and problems than for long established national minorities. To begin with there are typically very large numbers of different ethnic, religious and linguistic communities in major cities throughout Western Europe. In many schools in London and other British cities there are children from as many as twenty or thirty different ethnic and linguistic communities. It is usually impractical to provide 'mother tongue' education for all these children. And it is also difficult to make provision in the curriculum for detailed study of the history and culture of all the minority communities represented in any one school, let alone at a national level. As a result the primary objective is usually to provide special introductory or remedial classes in the national language and to develop a curriculum which will encourage an understanding of the dominant national institutions and culture and of the wide range of other immigrant cultures rather than concentrating on those of 'national' minorities in the traditional sense. The underlying purpose of an educational system in these circumstances is thus to assist in the integration of pupils from these new immigrant minorities in the wider national community while respecting the wide range of cultural diversity that has developed as a result of modern patterns of population movement. This must not displace the obligation of national governments to provide special educational provision for national minorities in areas where they are traditionally established. But it suggests that different policies in respect of the balance between linguistic and curriculum provision in respect of national and immigrant minorities may need to be developed in different areas within a country. This has wisely been recognized by the Advisory Committee in the concluding section of its *Commentary*. It is nonetheless necessary for some new thinking and new models of good practice to be developed to reflect the changing patterns of settlement by both national and immigrant minorities.

7. Equality of access

This distinction between national and immigrant minorities raises an additional difficulty in respect of equality of access under article 12(3) of the Framework Convention. It is not entirely clear, either from Advisory Committee's Opinions and its *Commentary* or otherwise, how this provision is to be interpreted in relation to other similar provisions in the Convention, notably in article 4. One possible interpretation is that members of national minorities should have equality of access to all public educational provisions whether or not they make special provision for minority linguistic or cultural identities. Another is that equivalent provision should be made for schools and universities and for other forms of education for members of national minorities. Though the Framework Convention specifically excludes any obligation on States to provide public funding for separate schools, colleges and universities for members of national minorities, the Opinions of the Advisory Committee have generally commended States which do so and have also urged states to adopt low threshold levels for provisions of this kind. The difficulty that may arise in this context is that provision of this kind for national minorities may be held to constitute discrimination against members of other non-national minorities who seek to gain equivalent public funding for similar separate or segregated schools for their own communities. This could result in the proliferation of ethnically or religiously segregated schooling for different minorities and thus frustrate national policies in respect of the integration of immigrant minorities in the wider national community. This is a matter of particular concern in current circumstances in respect of the development of separate or segregated Islamic schools which may contribute to raising ethnic and religious tensions in some areas. In the United Kingdom, for example, public funding has traditionally been granted to Anglican and Catholic schools as well as religiously

neutral state schools. If the preference expressed by the Advisory Committee in many of its Opinions and its *Commentary* for shared schooling with special bilingual or intercultural classes is to be sustained, some further thought may need to be given to the practical application of the principles of equal access and non-discrimination in respect of national and immigrant minorities.

8. The increasing complexity and flexibility of minority rights

These considerations indicate that it is increasingly difficult in a period of mass migration and settlement to prescribe policies, let alone to enforce legal rights, for the education of the very large range of different types, sizes and distributions of long established and newly immigrant minorities in particular States. This has been, perhaps reluctantly, recognised by the European Court of Human Rights in its decision in *Leyla Sahin v Turkey* in respect of the related issue of the wearing of headscarves in schools and colleges that this is a matter best left to legislation in individual States. As a result very different policies have been adopted in the courts and legislatures of Turkey, France, Germany and the United Kingdom, to name only a few examples where the issue has been politically contentious.

The need for flexibility and dialogue has also been highlighted by the Advisory Committee in the core considerations listed in the concluding section of its *Commentary*:

Different situations and different groups may need to be treated differently in order to ensure effective equality and access to good quality education for all persons.

Differences in geographic concentration, historical status and experience, kin-state support, levels of organizations, [and] gender disparities require different responses from the State and local and regional authorities.

The wishes of [parents and those receiving education] need to be heard and the right of effective participation as enshrined in article 15 of the Framework Convention should be kept in mind in all decision-making processes, including in the field of education.

This is a welcome recognition of the limitations of precise prescriptions and thus of judicial adjudication at an international level on minority rights in the field of education. The role of bodies like the Advisory Committee, which should in principle bring together an appropriate combination of educationalists and human rights lawyers, is to facilitate sustained dialogue involving all the relevant actors and to provide expert advice on policies and practices that have proved effective or problematic in achieving the underlying objectives of the Framework Convention.

The range of different types of minorities and what might be appropriate educational provision

<u>Type of minority</u>	<u>Policy objective</u>	<u>Curriculum</u>	<u>Language</u>	<u>Schools</u>
Indigenous communities	Maintaining their distinctive culture	Separate curriculum	Mother tongue education	Separate schools
Roma/Travellers				
‘National’ minorities	Maintaining their distinctive culture & preparing for employment	Curriculum to include both minority and national culture and history	Mother tongue & bilingual education	Split streams and classes in shared schools
(a) rural/concentrated				
(b) urban/dispersed				Integrated or bilingual schools
Divided societies	Avoiding communal separation and conflict	Curriculum to encourage shared understanding	Bilingual education	
Immigrant minorities	Encouraging integration & preparing for employment	Curriculum to develop national identity & multi-culturalism	Focus on national language skills	Special remedial classes and programmes
(a) established				
(b) recent				

NB: This framework is not intended to be read across or to be prescriptive, but to identify some legitimate objectives and strategies